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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

Adv. Case No. 20-80031

**TRUSTEE'S MOTION TO
STRIKE AFFIDAVIT OF RALPH
E. CROMWELL, JR.
REGARDING TRUSTEE'S
MOTION TO AMEND
COMPLAINT**

PERKINS COIE LLP, a Washington
limited liability partnership,
LOWELL NESS, individual and
California resident, GIGA WATT
PTE., LTD., a Singapore corporation,
and ANDREY KUZENNY, individual
and Russian citizen,

Defendants,

- and -

THE GIGA WATT PROJECT, a
partnership,

Nominal Defendant.

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1 Mark D. Waldron, in his capacity as the duly appointed Chapter 7 Trustee,
2 by and through his attorneys, the Potomac Law Group PLLC, hereby files this
3 motion (“Motion”) to strike the *Affidavit of Ralph E. Cromwell, Jr. Regarding*
4 *Trustee’s Motion to Amend Complaint*, filed in this adversary proceeding on
5 October 17, 2022, ECF No. 120 (“Cromwell Declaration”).

6 Affidavit or declaration testimony that which contains argumentative legal
7 conclusions, is inadmissible. *See Melendez v. Morrow County Sch. Dist.*, Civ. No.
8 07–875–AC, 2009 WL 4015426, at *9 (D. Or. Nov. 19, 2009) (“To the extent that
9 the evidentiary material submitted by either party is speculative or represents a
10 legal conclusion, the court, as a matter of course, will not factor that material into
11 the decision.”). *See also Burch v. Regents of the University of California*, 433
12 F.Supp.2d 1110, 1119 (E.D. Cal. 2006) (“[S]tatements in declarations based on
13 speculation or improper legal conclusions, or argumentative statements, are not
14 facts and likewise will not be considered on a motion for summary judgment.
15 Objections on any of these grounds are simply superfluous in this context.” (citing
16 *Smith v. County of Humboldt*, 240 F.Supp.2d 1109, 1115–16 (N.D. Cal. 2003)
17 (emphasis in original))).

18 The Cromwell Declaration is a supplemental brief masquerading as an
19 affidavit. It is not possible to parse the facts that may appropriately be included in
20 a declaration with the legal argument that Mr. Cromwell subjectively believed that
21 Professional Rule 1.6 required him to deceive the Trustee and that he believes the

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1 Trustee's counsel should have known that Perkins was not telling the truth when it
2 said that Giga Watt was a stranger and that Perkins had never represented Giga
3 Watt.

4 Wherefore, the Plaintiff respectfully requests that the Court strike the
5 Cromwell Declaration in its entirety and grant such other and further relief as the
6 Court deems necessary and just.

7 Dated: October 24th, 2022

POTOMAC LAW GROUP PLLC

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9 By: s/ Pamela M. Egan
10 Pamela M. Egan (WSBA No. 54736)
Attorneys for Mark D. Waldron, Chapter 7
Trustee, Plaintiff

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